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Group - Washington

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April 19, 1993

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Donna R. Searcy  
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Federal Communications Commission  
Mail Stop 1170  
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Washington, D.C. 20554

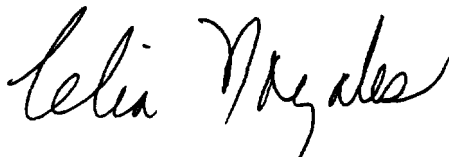
Dear Ms Searcy:

Re: CC Docket No. 93-22 (RM-7990) - Policies and Rules Implementing the Telephone  
Disclosure and Dispute Resolution Act

On behalf of Pacific Bell, please find enclosed an original and six copies of its  
"Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me  
should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
Policies and Rules Implementing )  
the Telephone Disclosure and Dispute )  
Resolution Act )  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
CC Docket No. 93-22  
RM-7990

**COMMENTS OF PACIFIC BELL**

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**Date: April 16, 1993**

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## SUMMARY

Pacific Bell offers these comments regarding the Commission's proposed regulations to implement the 1992 Telephone Disclosure and Dispute Resolution Act. Pacific Bell does not provide interstate transmission services to pay-per-call service providers, but does have an interest in the proceeding arising out of its roles as a provider of local exchange telephone service and a provider of billing services to certain interstate common carriers.

In general, Pacific Bell supports the Commission's proposals. A few of the proposals, however, raise concerns which Pacific Bell addresses herein. The major concerns which Pacific Bell addresses are the impracticality of a secondary code designation plan for interstate pay-per-call services, the inability of carriers and billing entities to identify certain collect calls as being pay-per-call in nature, the adequacy of tariffing a single blocking scheme in LEC intrastate tariffs, the need for a realistic standard of liability which reflects carriers' and billing entities' actual involvement with the content of pay-per-call information services, the amount of information to be disseminated, and cost recovery.

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COMMENTS OF PACIFIC BELL

Pacific Bell offers these comments in response to the Notice of Proposed Rulemaking released March 10, 1993, in the above-captioned proceeding ("NPRM") (para. 60). The NPRM seeks comments regarding the Commission's implementation of new Section 228 of the Federal Communications Act of 1934 (47 U.S.C. Section 228) as set forth in Title I of the Telephone Disclosure and Dispute Resolution Act ("TDDRA").<sup>1</sup> The TDDRA provides for the regulation and oversight of the interstate pay-per-call industry by the Federal Communications Commission ("Commission") and Federal Trade Commission.

INTRODUCTION

Pacific Bell's interest in this proceeding arises from its role as a provider of local exchange service and of pay-per-call billing services to certain interstate interexchange

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<sup>1</sup> Public Law 102-556, October 28, 1992.

carriers ("IECs"). Pacific Bell will, therefore, be subject to the requirements which Section 228 places upon local exchange carriers ("LECs") to offer to end users the option of blocking access to interstate pay-per-call services and upon entities which bill end users for pay-per-call services.

Pacific Bell wishes to make clear that Pacific Bell does not itself provide interstate pay-per-call transmission services and does not assign telephone numbers to providers of interstate pay-per-call services. Pacific Bell, therefore, is not subject to any of the obligations which new Sections 228(c) and (d) of the Act and the related proposed regulations place upon "any common carrier assigning to a provider of pay-per-call services a telephone number with a prefix or area code designated by the [Federal Communications] Commission."

The NPRM discusses and requests comments regarding a number of issues related to compliance with new Section 228. Because Pacific Bell does not have a relationship with interstate pay-per-call service providers, Pacific Bell limits its comments to those issues which will affect Pacific Bell as a LEC and as a provider of blocking and billing services. Pacific Bell addresses these issues in the order in which they are raised in the NPRM.

#### DISCUSSION

##### A. Designation of Pay-Per-Call Numbers

The Commission proposes to designate "900" as the only service access code which may be used for interstate pay-per-call services (NPRM para. 17). The Commission also seeks comment as to

whether intrastate pay-per-call services should be assigned to designated "central office" codes (also known as "secondary" codes or "prefixes"), which codes would be used to identify the nature of pay-per-call services (NPRM para. 18). Finally, the Commission invites discussion as to whether an office code designation system could be accommodated on 900 numbers (NPRM para. 18, n. 13).

While Pacific Bell fully supports the consolidation of interstate pay-per-call services on the 900 service access code for the reasons set forth in the NPRM, the Commission should not adopt a secondary code designation plan for either interstate or intrastate pay-per-call services. Under the North American Numbering Plan, the secondary code in interstate ten-digit "900" telephone numbers are assigned to IECs. This assignment enables LEC switches to route interLATA (interstate or intrastate) calls to the appropriate carriers.<sup>2</sup> The designation of secondary codes for particular pay-per-call services would fundamentally change the pay-per-call service industry and would unduly disrupt the provision of these telecommunications services by eliminating this routing function.

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<sup>2</sup> Because LEC switches cannot distinguish between interstate and intrastate interLATA calls, the Commission's proposed use of secondary codes would effect all interLATA calls, interstate and intrastate.

**B. Prohibition on Disconnection or Interruption for Nonpayment**

The Commission proposes to enlarge its existing prohibition against the disconnection of basic communications services for failure to pay interstate pay-per-call charges to prohibit both disconnection and interruption of either local exchange telephone service or long distance telephone service (NPRM para. 20). Pacific Bell does not disconnect end users from basic telecommunications service for failure to pay pay-per-call charges and supports the Commission's proposal to extend the existing disconnection prohibition. Such an extension is consistent with new Section 228.

However, the Commission's proposal to extend the disconnection/interruption prohibition to non-payment of interstate collect calls offering access to audiotext or group discussion pay-per-call services (NPRM para. 21) raises a practical concern. These pay-per-call-type collect calls appear no different to the common carrier or billing entity than other collect telephone calls. Other than total charge, which is not definitive, there is no indication that a collect call might be subject to the disruption prohibition. As a result, an end user could be inadvertently disconnected for nonpayment of a pay-per-call-type collect call.

Billing entities and common carriers should not, therefore, be liable for disconnection or interruption of local exchange or long distance telephone service for nonpayment of pay-per-call-type collect call charges. It should be noted that,



although the possibility of inadvertent disconnection or interruption is real, it is also slight. Pacific Bell anticipates that in most cases, a customer will bring the charges to Pacific Bell's attention and Pacific Bell will, either from the customer or through investigation, learn that the charges are pay-per-call in nature.

C. Blocking Access to Pay-Per-Call Services

The Commission has requested comments on the technical and economic feasibility of detailed blocking or presubscription as contemplated by new Section 228. In particular, the Commission has solicited comments on the extent to which technical capabilities and number assignments have changed since the Commission issued its Report and Order in Policies and Rules Concerning Interstate 900 Telecommunications Services, 6 FCC Rcd 6166 (1991) (NPRM para. 27).

Blocking of access to interstate pay-per-call services by blocking either certain specific prefixes or specific pay-per-call numbers continues to be neither technically nor economically feasible. As discussed above, prefixes are used to route interLATA 900 calls to the appropriate IECs and not to identify the nature of calls. Thus, blocking by prefix would block calls to an IEC rather than to particular kinds of pay-per-call services. In addition, revising the use of prefixes to identify the nature of calls rather than to identify the IEC would require a massive and costly upgrade in LEC switch capacity to screen the

NPA-NXX of each interstate call. It also would disrupt existing number assignments.

Furthermore, it does not otherwise appear necessary to enable subscribers to chose either prefix-based or selective pay-per-call blocking. On a very limited and high-level basis, Pacific Bell does aggregate its intraLATA pay-per-call services on certain prefixes according to the nature of the service<sup>3</sup> and offers intraLATA blocking by prefix. In addition, the California Public Utilities Commission has required IECs authorized to provide interLATA pay-per-call services in California to each designate a "harmful matter" prefix, and Pacific Bell offers blocking of those prefixes.<sup>4</sup> However, Pacific Bell's residential end users who have elected any kind of blocking of access to pay-per-call services have overwhelmingly selected the "block all" option. As of February 1993, 29.7% of Pacific Bell's residential end users have requested blocking. Of these, 97% have asked that all pay-per-call calls be blocked.

The Commission has also sought comments on the the tariffing of blocking options. In particular, the Commission has asked whether LECs should be required to include the rates and

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<sup>3</sup> Pacific Bell assigns intraLATA "harmful" services to the 303 prefix, "live" services of a general nature to the 505 prefix, and recorded services of a general nature to the 844 prefix.

<sup>4</sup> This technical ability to aggregate and block access to pay-per-call services in California would, for the reasons already described, have untoward consequences if applied to interstate pay-per-call services.

regulations governing blocking in their interstate end-user tariffs, whether a dual federal/state tariff procedure would be workable, and the degree to which the Commission should defer to state blocking requirements different from those imposed in new Section 228 (NPRM para. 28).

As noted above, a LEC has no way to identify an interLATA 900 call as either interstate or intrastate. Thus, it would be impossible for a LEC to administer differing interstate and intrastate blocking scenarios.<sup>5</sup> Therefore, a dual federal/state tariffing procedure for blocking access to pay-per-call services is not workable.

For the foregoing reason, intrastate and interstate blocking scenarios must as a practical matter be identical. As a result, there is no need to require tariffing in both the interstate and intrastate jurisdiction. Duplicate tariffs would be wasteful of LEC and regulatory resources. A single tariff scheme in either jurisdiction will accomplish blocking in both jurisdictions.

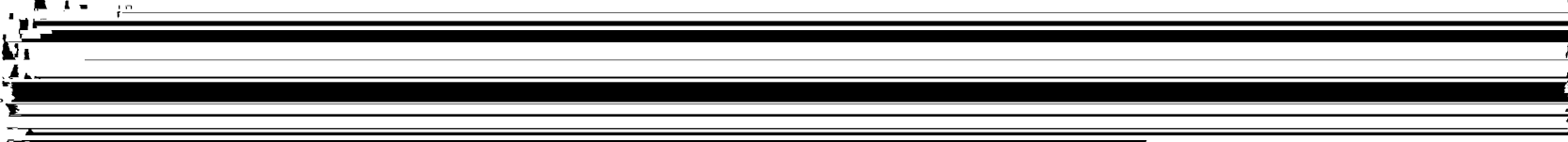

The Commission should, therefore, permit LECs to place all blocking rates and regulations in their intrastate tariffs if those provisions are identical to or exceed the requirements of

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<sup>5</sup> Even if it were possible to effect differing interstate and intrastate schemes, their existence would be confusing to end users.

new Section 228(c)(4).<sup>6</sup> The Commission has to date permitted LECs to place their blocking options in only their state tariffs, and this has effected the Commission's blocking requirements. Furthermore, blocking is an option offered to LECs' local exchange customers and therefore properly belongs in the local exchange tariff.<sup>7</sup>

D. Restriction on Use of 800 Numbers for Pay-Per-Call and Other AudioText Services

Pacific Bell fully supports the Commission's proposal to adopt regulations constraining the use of 800 numbers or any other number generally understood to be free for pay-per-call services. As the billing entity for certain IECs providing interstate pay-per-call transmission services, Pacific Bell has received numerous complaints from end-users regarding pay-per-call charges



**E. Disclosure and Dissemination of Pay-Per-Call Information**

Pacific Bell supports the substance of the Commission's proposed requirements to disseminate pay-per-call information to end-users (NPRM paras. 34-35). However, the Commission should make clear that to the extent that a common carrier incurs costs in implementing these regulations solely as a billing entity, that billing common carrier is entitled to recover those costs from its interstate common carrier customer.

The Commission should also make clear the scope of "interested persons" under proposed regulation Section 64.1509. The spirit of the TDDRA suggests that "interested persons" are end users seeking information about pay-per-call services for which they have been charged. However, without clarification and

provided in violation of" the law.<sup>8</sup> The phrase "reasonably should know" may have the untoward consequence of placing Pacific Bell as a billing entity, as well as other carriers as transmission providers, in the position of having to actively investigate the activities of pay per call service providers.

Requiring billing entities and common carriers to "police" the activities of pay-per-call service providers is not only costly, but inappropriate. Therefore, Pacific Bell urges the Commission to adopt a standard of liability under Section 228 and its related regulations for common carriers and billing entities the standard which it recently adopted in Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90. In that proceeding, the Commission stated,

"In the absence of 'a high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions,' common carriers will not be held liable for the transmission of a prohibited facsimile message. Use of Common Carriers, 2 FCC Rcd 2819, 2820 (1987)."

The Commission also seeks comment on, but does not propose, a prohibition against common carriers or their billing agents billing interstate collect calls that offer or initiate

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<sup>8</sup> The "reasonably should know" or "reasonably should have known" standard occurs several times in new Section 228 and the Commission's proposed regulations. The comments provided here apply to the use of the standard throughout Section 228 and the proposed regulations.

<sup>9</sup> Report and Order, FCC 92-443, released October 16, 1992 para. 54.

audiotext or simultaneous voice conversation programs (NPRM para. 36). Such a prohibition is not technically feasible absent an industry standard as to dialing convention, data processing characteristics and strict uniformity. As discussed in Section B. above, nothing in the billing record generated by such calls will identify such collect calls as involving pay-per-call services. Therefore, the Commission should not adopt such a prohibition.

For the same reason, the Commission should not adopt a regulation to include pay-per-call-type collect calls in the pay-per-call portion of end user bills (NPRM para. 39). Again, there is no way for the carrier or billing agent to accurately identify these kinds of collect calls.

The Commission also seeks comment on whether information in addition to that required by new Section 228 should be included on the end-user's pay-per-call services bill (NPRM para. 37). The Commission should not require that the pay-per-call service provider's name and address or other information about the provider be included on the bill to end users. Pacific Bell's bills already provide information sufficient to enable an end user to investigate a call. Call identifying information (time, date, duration and a limited description of the call) and a toll-free number for further inquiry appear on the front of the bill. Bill space is limited and costly to increase. Such costs are unnecessary in light of the information already provided.

The Commission should also not require that end user bills set forth the collection rights of pay-per-call service

providers, the steps necessary to dispute pay-per-call charges or a statement that local exchange and long distance telephone service cannot be disrupted for nonpayment of pay-per-call charges (NPRM para. 37). Pacific Bell does not object to optional inclusion of such information on the bill, and in fact already prints similar information on the back of its bill. However, mandating such information would be costly to implement for carriers and billing entities which have not already done so. Such costs are unnecessary in light of the required information campaign and ongoing existence of a toll-free access to information.

#### G. Cost Recovery Issues

The Commission has requested comments on the means of recovering the costs associated with complying with new Section 228. Specifically, the Commission has requested comments regarding the manner of identifying these costs and excluding these costs from local and long distance rates. The Commission recognizes that common carriers may incur compliance-related costs associated with pay-per-call services from implementing free blocking, information dissemination, billing procedures and refund requirements. These costs are referred to as "restricted" costs



and may not be recovered from local or long distance ratepayers  
(NPRM paras. 41 et seq.).

CONCLUSION

For the foregoing reasons, Pacific Bell urges the Commission to take the actions described in the foregoing comments.

Respectfully submitted,

PACIFIC BELL



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